IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE A.GOPAL REDDY**

**WRIT PETITION NO: 27683 of 1996**

Between:

1. Galigudem Lalaiah, S/o Sri Chinnaiah, aged about 60 years

agriculture, R/o Babapur, Roopkhanpet, Pargi Mandal,

Ranga Reddy District (Died).

2. Galigudem Narsimhulu, S/o Galigudem Lalaiah,

R/o Babapur, Roopkhanpet, Pargi Mandal, Ranga Reddy District.

{Petitioner No.2 is brought on record as LR of the deceased sole petitioner as per Court Order dated 12-8-1999 in W.P.M.P.No.21099/99}

**... PETITIONERS**

AND

1. The Mandal Revenue Officer, Pargi Mandal

Ranga Reddy District.

2. Sri Yerrala Laliah, S/o Sri Chinnaiah, aged 40 years,

agriculture, r/o Babapur, Roopkhanpet, Pargi Mandal,

Ranga Reddy District.

**...RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of a Writ of Mandamus declaring the action of the first respondent in passing the eviction order in Proc.No.B/798/95 dated 9-5-1995 as arbitrary and illegal and consequently direct the respondents not to evict the petitioner from his lands in survey No.104/17 admeasuring about Acs.3.37 Gts. situated at Babapur (v) Roopkhanpet, Pargi Mandal, Medak District and pass such other order or orders as this Hon'ble Court may deem fit and proper.

**Counsel for the Petitioner: MR.S.SATYAM REDDY**

**Counsel for the Respondent No.2: MR.L.PRABHAKAR REDDY, Counsel for the Respondent No.1: The G.P. for Revenue.**

The Court made the following:

## ORDER:

Second respondent's late father, in whose favour a certificate was issued under Section 38-E of A.P. (Telangana Area) Agricultural Tenancy Act, 1979 (for short 'the Act') to an extent of Ac.7.35 guntas in S.No.104/17, filed a representation to put him in physical possession of the land to an extent of 3.37 guntas, by evicting the petitioner. The Mandal Revenue Officer acting on the representation by impugned proceedings No.B/798/85 dated 09-05-1995, after issuing eviction notice to the petitioner on 02-04-1995, to which the petitioner has not submitted any explanation, ordered for restoration of possession to Sri Yerala Chinnaiah in exercise of the powers conferred under subsection 2 of Section 38-E as amended by Amendment Act 2 of 1979 after eviction of the petitioner from the suit schedule property. Questioning the said action, the present writ petition has been filed contending that an extent of 3.37 guntas situated in S.No.104, purchased by the petitioner on 21-12-1960 belongs to one Mr. Abdul Wadood and whose total extent is Ac.47.00. In 1993, Pattedar Passbook was also issued to the petitioner by mutating

his name in the revenue records; in view of the same, impugned order passed by the first respondent is liable to quashed as the petitioner was neither given opportunity nor any notice.

3. Second respondent who filed counter affidavit along with vacate stay petition stated that the said revenue records were manipulated by the petitioner. He further submits that the Revenue Divisional Officer, Vikarabad on 01-10-1975 granted ownership Certificate to the petitioner under Section 38-E of the Act, in view of his continuous possession and eligibility and that he is entitled to restoration of possession to the portion which was occupied by the petitioner. After issuing notice by the R.D.O., the name of the petitioner was deleted from the revenue records and the same was rectified including the name of the petitioner. After passing the impugned order on 09-05-1995, possession was restored to the second respondent, after evicting the petitioner by the Mandal Revenue Inspector under *Panchanama* DT. 01-06-1995.

4. It is contended by the learned counsel for the petitioner that the second respondent is entitled only to an extent of 3.37 guntas, i.e. nearly 50% of the total extent, and therefore petitioner cannot be dispossessed from the land, which is in his possession. When the petitioner purchased the property and his name has been recorded in the revenue records, he is entitled to maintain possession, unless the portion, for which certificate under Section 38-E was granted in favour of the respondent's father, is identified the petitioner cannot be evicted from the suit schedule property.

5. Curiously, in the affidavit filed in support of the petition, it is not stated whether the property purchased by the petitioner was under a registered Sale Deed from the original landlord or not. Be that as it may, once certificate under Section 38-E is issued in favour of tenant, it shall be conclusive evidence of the P.T. having become the owner as stated in Section 38-E (2) the tenant is entitled to restoration of possession and all objections to the very grant of the

certificate must be raised before it is granted or in appeal or revision cannot be permitted to be raised at the stage of delivery proceedings under the new proviso to Section 38-E (2) as held by a Full Bench of this Court in ***Sada Vs. The Tahsildar*** . In view of the same, I see no infirmity in the impugned order ordering restoration of the possession to the second respondent-Certificate holder by the Mandal Revenue Officer.

The Writ Petition is without merit and it is accordingly dismissed. No order as to costs.

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A. **GOPAL REDDY, J**

September 22, 2004

**MRR**

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To:

1. The Mandal Revenue Officer, Pargi Mandal

Ranga Reddy District.

2. Two C.D. Copies.

3. Two C.C.s to the G.P for Revenue, High Court of A.P.,

Hyderabad (OUT).